



**BEFORE THE UNITED STATES COPYRIGHT OFFICE**

**REPLY OF THE LIBRARY COPYRIGHT ALLIANCE TO  
THE REQUEST FOR ADDITIONAL COMMENTS ON  
SECTION 1201 OF THE DIGITAL MILLENNIUM COPYRIGHT ACT**

We appreciate this opportunity to provide additional comments on Section 1201 of the Digital Millennium Copyright (DMCA). We are pleased that the Copyright Office is considering recommendations to that Congress that make permanent some of the exemptions granted previously during the triennial rulemaking. However, in addition to the four categories identified in the request for additional comments, the Copyright Office should recommend that the exemption for educational uses of audiovisual works be made permanent. The Librarian first granted this exemption in 2006, and renewed it in the 2010, 2012, and 2015 rulemaking cycles. As audiovisual works have become increasing more central to education, this exemption has become even more critical to effective instruction at all levels. At the same time, rights holders have never demonstrated that the exemption has led to any infringing activity. Thus, making the exemption permanent would eliminate the burden of seeking an exemption every three years without causing rights holders any harm.

We now respond to some of the specific questions raised in the request for additional comments.

## **1. Proposals for New Permanent Exemptions**

### **a. Assistive Technologies for Use by Persons Who Are Blind, Visually Impaired, Or Printed Disabled.**

We are pleased that the Office has recognized the widespread support for adoption of a permanent exemption to facilitate access to works in electronic formats by persons who are print disabled. The language of the proposed exemption, however, is unduly narrow and complex. Like the existing temporary exemption, the proposed permanent exemption would have two prongs: one for individuals with print disabilities, the other for the authorized entities that serve them. The first prong would have an additional requirement “that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels.” This remuneration requirement was added in the 2012 rulemaking, after “proponents confirmed that it was not their intent to create a situation where publishers are not getting paid for their works....” Library of Congress, Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 77 Federal Register 65260, 65263 (October 26, 2012). This remuneration requirement would apply even though the exemption is available only “when a copy of such work is lawfully obtained....”

Stacking a remuneration requirement on top of a lawful acquisition requirement introduces ambiguities. For example, if a sighted person purchases and reads an e-book, then gives it to her blind brother, could the brother circumvent the technological measure disabling the screen reader function without paying an additional fee to the publisher? Would such an additional fee be “appropriate?” The answer is unclear. If a blind person lawfully obtains a copy, the blind person should be able to read it, regardless of whether

he obtained it by purchase or operation of the first sale or fair use doctrines. He should never have to pay an additional fee for the “privilege” of accessing the book is his lawful possession.

Accordingly, the exemption should have only one prong as follows:

Lawfully obtained literary works, or musical works that have been fixed in the form of text or notation, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies.

#### **d. Obsolete Technologies**

LCA supports a permanent exemption for circumvention of obsolete access controls. Obsolete access controls is a problem libraries currently confront, and will encounter more in the future as more content is digitally locked. For example, libraries need to circumvent obsolete access controls on video games for the purpose of preserving the video games. The Librarian granted an exemption for this class of works in the 2015 cycle, and had previously adopted exemptions relating to other obsolete access controls. These exemptions have caused rightsholders no harm. Because circumvention of obsolete access controls leads to no rightsholder injury, Congress should adopted a permanent exemption for the circumvention of obsolete access controls.

#### **e. International Considerations**

The adoption of permanent exemptions for educational uses, the print disabled, and obsolete technologies may require renegotiation of some of our free trade agreements. There is no reason for our trading parties to oppose additional permanent exemptions, which would benefit their citizens. In the future, our trade negotiators should avoid such rigid, restrictive language concerning exceptions.

### **3. Anti-Trafficking Provisions**

The request for additional comments acknowledges a problem LCA has long stressed: under the text of Section 1201(a)(1), an exemption granted by the Librarian does not apply to the anti-trafficking provision of Section 1201(a)(2). On the face of the statute, a person granted an exemption to circumvent would not be able to manufacture a circumvention tool, and could not obtain such a tool from a third party. This makes no sense. Why would Congress establish a framework for creating exemptions that cannot be used?

Thus, Section 1201(a) should be amended to provide an exception to the anti-trafficking provision for the purpose of making and distributing tools necessary to exercise an exemption. The fear that such an exception may result in tools being used for unauthorized purposes is unfounded. Circumvention tools already are widely available on the Internet. As a result, the practical effect of the anti-trafficking prohibition is only to restrict lawful uses by high profile entities such as libraries and educational institutions. Accordingly, creating an exception to the anti-trafficking provision would not lead to additional unlawful activity.

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